IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2117 of 2001

to

FIRST APPEALNo 2120 of 2001

with

FIRST APPEAL No 2121 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO. LTD.

Versus

GANGABEN NANJIBHAI DABHI

Appearance:

1. First Appeal No. 2117 of 2001
MS MEGHA JANI for Petitioner

2. First AppealNo 2121 of 2001
MS MEGHA JANI for Petitioner

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/05/2001

ORAL JUDGEMENT

Heard Ms. Megha Jani learned advocate for the appellant in each of the appeal.

2. All the appeals being cognate matters are taken up for hearing and are being disposed of this common judgement.

3. The appellants have filed present appeals under Section 173 of the Motor Vehicle Act,1988 (for short "the Act") as insurer of the offending vehicle to challenge the judgement and award passed under Section 140 of the Act by M.A.C.Tribunal (Main), Bhavanagar in the claim petition filed by respondent no.1 in each of the matter. The Tribunal appears to have passed interim award below Exh.5 and has awarded the amount under Section 140 of the Act.

4. It would be pertinent to note that the award made under Section 140 of the Act being in the nature of interim award subject to adjustment against the award which may be passed in the main claim petition pending before the Tribunal, it would not be just and proper to interfere at this stage of the matter and no useful purpose would be served by admitting the respective appeals and keeping it pending. However, an undertaking of the respondent no.1 (claimant of main petition) in each of the matter shall be taken so that decision in the main petition could be obtained on merits.

5. On the above stated fact following orders are passed :

(i) The respondent no.1 - claimant in respective claim petition pending before the M.A.C.Tribunal (Main), Bhavnagar as stated in the memo of appeal shall file an undertaking within a period of four weeks from date of service of this order before the Tribunal to the effect that claimant shall not withdraw the petition nor shall abandon the claim or permitted to be dismissed it for default or for any other cause and shall obtain the decision

on merits.

(ii) That on filing of such undertaking by the claimant, the Tribunal shall pass appropriate order of disbursement including the order of investment of 50% of the award as per the guidelines provided and payment of 50% in respect to amount of award deposited by present appellant against security to the satisfaction of Tribunal.

(iii) It is stated at bar on behalf of appellant that while filing these appeals, 50% amount of the impugned award has been deposited in this Court. However, to avoid the execution of the award, entire amount of the impugned award is again deposited before the Tribunal and as such, permission is granted to the appellant to withdraw the amount deposited in this Court after due verification as to deposit of the entire amount of the award in the Tribunal. The Registry shall make the verification within four weeks from the date of this order and refund the amount, if permissible under the order within six weeks, but not later than 15.6.2001.

6. On the basis of above stated discussion and subject to observation and direction given hereinabove, each of the appeal stands disposed of as rejected with no order as to costs.

(A.K.Trivedi.J.)

(vipul)